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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. [redacted] 147

EARL C. GIBBS, INC., *Petitioner*,

v.

DEFENSE SUPPLIES CORPORATION

and

RECONSTRUCTION FINANCE CORPORATION, *Respondents*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS.

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To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Earl C. Gibbs, Inc., a corporation, petitions this Court for a writ of certiorari to review a judgment of the United States Emergency Court of Appeals dismissing petitioner's complaint there, and in support of this petition respectfully shows:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The Emergency Court of Appeals in dismissing petitioner's complaint has approved a false presumption of fact, made conclusive and irrebuttable by regulation, and has denied to petitioner any opportunity to show that such presumption is false. That Court rested its decision solely on administrative convenience, holding that on this ground the administrative agency might indulge the presumption, make it conclusive, and deny any and all opportunity to rebut it. The only administrative *in*convenience suggested is the task of determining the facts. Actually, the task would be even simpler because under a prima facie presumption the burden of rebutting it would be on petitioner and the agency would merely determine whether the presumption had been rebutted by the showing made. The holding of the Emergency Court of Appeals that petitioner might be deprived of its rights *on basis of a presumption of fact which is contrary to fact* denies to petitioner due process of law and is in conflict with the decisions of this Court. *Reiner* v. *Donnan,* 285 U. S. 312; *Schlesinger* v. *Wisconsin,* 270 U. S. 230. The presumption in issue, namely, that a company shall be presumed to be "owned or controlled" by another if it is indebted to the other in an amount in excess of 5 per cent of the debtor's monthly sales, is also subject to condemnation under the decision of this Court in *Tot* v. *United States,* 319 U. S. 463, there being no rational connection between the mere existence of a debt, standing alone, and the ultimate fact of ownership or control.

The effect of the decision of the Emergency Court of Appeals is to take from petitioner the generally fair and equitable maximum prices maintained under the Emergency Price Control Act of 1942* to which it would be entitled ex-

* 56 Stat. 31, 50 U. S. C. App.

cept for the false presumption of fact and to impose upon petitioner a lower level of revenue on its products. The maximum prices for fresh beef in carcasses and wholesale cuts produced and sold by so-called non-processing slaughterers is made up of a maximum sales price for the products *plus* a special subsidy to compensate for the inadequacy of the maximum price to cover costs and provide a margin. The subsidy is correctly labeled a "compensatory payment." Slaughterers of cattle who also engage in the production of processed meat products receive only the maximum prices for their fresh beef carcasses and wholesale cuts. The subsidy payment was limited to non-processing slaughterers as a class because they engage in no processing, have no other operations from which profits might be obtained, and the maximum prices were found to be too low to permit this class of slaughterers, constituting an "important segment of the industry" (R. 57), to continue in business.

The compensatory payment was established under directive of the Office of Economic Stabilization dated October 25, 1943. (8 F. R. 14641)* This directive ordered Defense Supplies Corporation to pay a subsidy of 80 cents per cwt. to non-processing slaughterers of cattle, such slaughterers

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* The court below summarized the basis of authority possessed by the Office of Economic Stabilization as follows (R. 51):

> "Sections 1 and 2 of the Act of October 2, 1942, now cited as the Stabilization Act of 1942 (56 Stat. 765) authorized the President to issue general orders stabilizing prices, wages, and salaries affecting the cost of living, such stabilizations, so far as practicable, to be on the basis of the levels which existed on September 15, 1942; and gave him broad power to delegate his authority under the Act to such department, agency or officer as he might direct. By Executive Order 9250 issued October 3, 1942 (7 F. R. 7871), the President delegated such authority to the Office of Economic Stabilization. In Title I of this Executive Order, the Director of the Office of Economic Stabilization was directed to formulate and develop a comprehensive national economic policy with respect to prices, rents, wages, salaries, profits, rationing, subsidies, and all related matters, with a view to stabilizing the cost of living in accordance with the Act of October 2, 1942."

being carefully defined therein.** Petitioner is a non-processing slaughterer of cattle as defined in the directive. Defense Supplies Corporation as the paying or disbursing agent issued further regulations which are the subject of this proceeding.*** Under such further regulations Defense Supplies Corporation provided that in order to be eligible to receive the special compensatory subsidy a non-processing slaughterer must not be affiliated with, or own or control, or be owned or controlled by, a processor. This regulation defined the phrase "own or control" as meaning—

> "... to own or control directly or indirectly a partnership equity or in excess of 10 per cent of any class of outstanding stock *or to have made loans or advances in excess of 5 per cent of the other person's monthly sales.*" (Italics supplied)

During the period in issue petitioner was indebted to a processor of meat, Hughes Provision Company, in an amount in excess of 5 per cent of petitioner's monthly sales. Petitioner was in all respects eligible to receive the compensatory subsidy payment under the terms of the Directive of the Office of Economic Stabilization and under the regulation of Defense Supplies Corporation except that under the latter regulation *it was conclusively presumed to be owned*

** The directive provided as follows:

> "5. Slaughterers who during the year 1942, or a representative portion thereof, sold and who currently sell 98% or more of the total dressed carcass weight of cattle slaughtered by them in the form of carcasses, wholesale cuts, frozen boneless beef (Army specifications) (carcass equivalent) or ground beef, shall be paid in addition to the payments authorized by Regulation No. 3 of Defense Supplies Corporation (Livestock Slaughter Payments), the amount of $0.80 per cwt. of cattle slaughtered during the month for which such payments are made.
>
> 6. Defense Supplies Corporation is directed to amend Regulation No. 3 (Livestock Slaughter Payments) in accordance with this Directive." (8 F. R. 14641)

*** Amendment 2 (9 F. R. 1820) to Regulation No. 3 (8 F. R. 10826).

or controlled by Hughes Provision Company *solely because of such loan.* Defense Supplies Corporation and Reconstruction Finance Corporation, defendants below, admit the actual and complete independence of the petitioner and the absence of affiliation or control in all the usual and ordinary meanings of these terms. The mere existence of the loan is the sole basis on which petitioner was held to be ineligible to receive the compensatory payment. The following allegations of the complaint in the Emergency Court of Appeals were admitted by defendants in their answer to the complaint, the reference to the protest in the quotation being to the protest filed with Defense Supplies Corporation (R. 22,32):

> ". . . in said protest Complainant fully discloses the ownership of its stock and the names of its officers, the nominal dealings in meat products between Complainant and said Hughes Provision Company, demonstrated the complete independence of Complainant from Hughes Provision Company and from all other corporations or persons handling meat or meat products, either direct or indirect, showed that Complainant had no source of income or profit from the slaughter of cattle and the sale of fresh beef other than the sale of said fresh beef at the lawful prices permitted by RMPR No. 169 and by receipt of subsidy payments * * *
> "Said protest also showed that during said period November 1, 1943, through November 30, 1944, Complainant was in fact and in law not owned or controlled or affiliated with said Hughes Provision Company and that said Hughes Provision Company had no voice, direct or indirect, or any right to a voice, in the operation or management of Complainant and that Complainant's operation and management during said period was wholly independent and solely in the interest of Complainant's stockholders."*

Despite the admission that petitioner was not owned or controlled, the false but conclusive presumption of the reg-

* In dismissing petitioner's protest, Defense Supplies Corporation did not challenge any of the facts shown in the protest. This is pointed out by the court below. (R. 56)

ulation to the contrary operates to deny to petitioner the compensatory subsidy payment and the generally fair and equitable maximum prices to which it is entitled under the Emergency Price Control Act.

The decision of the Court below will be found at R. 48.

Petitioner's protest against the conclusive presumption established by Amendment 2 to Regulation No. 3 was filed with Defense Supplies Corporation on March 2, 1945, the filing of such protest being pursuant to section 203 of the Emergency Price Control Act of 1942.* Petitioner was notified by letter dated April 23, 1945, that its protest had been denied. Petitioner's complaint, appealing from such denial, was filed with the Emergency Court of Appeals on May 21, 1945. The decision of the Emergency Court of Appeals was handed down May 8, 1946, and its judgment was entered on that day.

The decision of the Emergency Court of Appeals was by vote of two to one. Judge McAllister dissenting, said (R. 62):

> "But it would be unreasonable to deny complainant any opportunity to prove that it was unaffiliated with a processor, or, while admitting it was not owned or controlled by a processor, to refuse the subsidy payment, merely because of the conclusive presumption promulgated by the administrative agency. Accordingly, I am of the opinion that the conclusive presumption of ownership or control provided by the Amendment to the Regulation—rather than a prima facie presumption—is arbitrary and unreasonable, and should be set aside."

The compensatory payment to non-processing slaughterers became effective November 1, 1943. Soon thereafter Defense Supplies Corporation issued a form to the trade entitled "Statement Establishing Eligibility for Extra Compensation Under Amendment No. 2 to Regulation No.

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* This protest procedure before Defense Supplies Corporation was approved by the Emergency Court of Appeals and its own jurisdiction confirmed in *Illinois Packing Co.* v. *Snyder*, 151 F. (2d) 837.

3 of Defense Supplies Corporation" which form petitioner filled out fully and accurately. Thereafter petitioner received the compensatory subsidy payment on each month's slaughter until its eligibility was questioned in November, 1944, because of the loan. The form had not called for any information regarding loans. Petitioner's claim for its November, 1944, slaughter in the amount of $22,120.56 was denied. The compensatory subsidy payments which petitioner had received for the months November, 1943, through October, 1944, amounting to $218,865.12, were required to be repaid. On May 9, 1946, almost contemporaneous with the decision of the Emergency Court of Appeals herein, the Office of Price Administration, proceeding under the Act of June 23, 1945*, found that petitioner had received the compensatory payments in good faith, reasonably believing it was entitled hereto, that it would be inequitable to require petitioner to repay any part of the payments actually received, and granted petitioner relief from the repayment of the sums received. (R. 64) No relief was granted as to the compensatory payment due for November, 1944, in the amount of $22,120.56, by virtue of the fact that the provisions of the Act of June 23, 1945, authorizes relief only as to subsidy payments actually received by the slaughterer. Such amount, covering operations in November, 1944, remains in dispute and unpaid.

II.

BASIS OF JURISDICTION.

The judgment of the Emergency Court of Appeals sought to be reviewed was entered on May 8, 1946. The jurisdiction of this Court is invoked under Section 204(d) of the Emergency Price Control Act of 1942, 56 Stat. 31, 50 U. S. C. App. Sec. 924(d).

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* Section 2 of Public Law 88, 79th Cong., 1st Sess., C. 193, 59 Stat. 26.

III.

SPECIFICATION OF ERRORS TO BE URGED.

The Emergency Court of Appeals erred in the following respects:

1. In refusing to declare the regulation of Defense Supplies Corporation invalid in that it arbitrarily established a conclusive presumption of the fact of ownership or control contrary to fact.

2. In refusing to declare the regulation invalid in that it provided no opportunity to rebut the unusual presumption that an indebtedness in excess of 5 per cent of the debtor's monthly sales subjected the debtor to ownership or control by the creditor.

3. In refusing to declare the regulation invalid on the ground that no rational relationship exists between the mere fact of indebtedness, standing alone, and the presumed ultimate fact of ownership or control.

4. In refusing to declare the regulation invalid on the ground that in the absence of actual ownership or control the mere fact of indebtedness, standing alone, has no rational relation to the determination whether a non-processing slaughterer of cattle should be paid, or denied, the compensatory subsidy.

IV.

QUESTIONS PRESENTED.

1. May Defense Supplies Corporation, as paying or disbursing agent, on the ground that it is deemed inconvenient to determine the facts, impose by regulation a conclusive presumption of fact, which is contrary to fact, and on basis of such false presumption deny to petitioner the subsidy payment to which it is otherwise entitled?

2. May Defense Supplies Corporation, on the ground that it is deemed inconvenient to determine the facts, deny

to petitioner any opportunity to rebut the unusual presumption, imposed by regulation, that indebtedness by petitioner (in excess of 5 per cent of its monthly sales) subjects it to ownership or control by the creditor?

3. May Defense Supplies Corporation validly impose by regulation a conclusive presumption of ownership or control of one company by another based solely on the mere existence of an indebtedness by one of the companies to the other in an amount in excess of 5 per cent of the debtor's monthly sales?

4. May Defense Supplies Corporation lawfully deny the subsidy payment to petitioner on basis of a regulatory presumption of ownership or control when actual ownership or control does not exist, such denial being based solely on the fact of indebtedness and the asserted administrative inconvenience of determining whether the debt does in fact create ownership or control?

V.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

The Emergency Court of Appeals has decided an important question of federal law in conflict with the applicable decisions of this Court. The question is a fundamental one of broad application. It is of public importance because the Emergency Court has exclusive original jurisdiction of all cases involving the validity of price and subsidy regulations issued under Section 2 of the Emergency Price Control Act and, except for review by this Court, is the only court passing upon such cases. Rulings by the Emergency Court in conflict with the decisions of this Court can not be corrected except by this Court and unless corrected many persons may be deprived of their rights without due process of law and contrary to the decisions of this Court.

The present case presents a striking example of inherently arbitrary action accomplished by the employment

of the conclusive presumption of fact. Admittedly petitioner is not, and was not, owned or controlled by any meat processor; but it is denied its statutory rights by the device of a regulatory presumption of fact under which, contrary to fact, petitioner is held to be owned or controlled. Rules of law are without meaning if citizens may be denied their rights under such laws by false presumptions of fact made conclusive by regulation.

The conclusive presumption of fact has been condemned by this Court as a denial of due process under the Fourteenth Amendment when employed by a state legislature, *Schlesinger* v. *Wisconsin*, 270 U. S. 230, and as a denial of due process under the Fifth Amendment when employed by the Congress of the United States, *Reiner* v. *Donnan*, 285 U. S. 312. Such an inherently arbitrary device, repugnant to due process of law, is likewise denied to Defense Supplies Corporation, an administrative agency of the Congress.*

The maximum prices maintained on fresh beef sold by petitioner and other non-processing slaughterers were below cost of production and too low to be validly maintained unless a compensatory payment was made. As the Emergency Court said: ". . . hence the extra subsidy of 80 cents per cwt., without which RMPR 169 would have become invalid as to such group of slaughterers." (R. 57) The Emergency Court had upheld the validity of the maximum beef prices as to processing slaughterers because of their profits from processing operations. *Armour & Co.* v. *Bowles*, 148 F. (2d) 529. It was the absence of processing operations, from which profits might have been obtained, and their sole dependence on the prices received for their

* The Emergency Court assumes that the regulation of Defense Supplies Corporation had the approval of the Federal Loan Administrator (R. 57); such Administrator is, however, no more free to act arbitrarily and without due process of law than is Defense Supplies Corporation. Both were subject to the directive of the Office of Economic Stabilization, as found by the Emergency Court (R. 57), and neither may arbitrarily deny to petitioner that to which it is legally entitled.

fresh beef that led to and required the payment of a compensatory subsidy to non-processing slaughterers who constitute an "important segment of the industry". (R. 57) The Emergency Court said (R. 57):

> "As explained by the Economic Stabilization Director in his public statement, the general purpose was to afford relief to a group of slaughterers who do not derive profits from further processing operations. It is thus consistent with the policy of the Directive to deny the special subsidy to a non-processing slaughterer affiliated with and controlled by a processing slaughterer—otherwise the benefit of the special subsidy would flow to persons not intended to be benefited and not needing the special relief."

Admittedly petitioner had no processing operations from which it might have obtained profits to overcome its losses on fresh beef. Admittedly it was not affiliated with or owned or controlled by any processor and receipt by it of the compensatory payment would not benefit any person "not intended to be benefited and not needing the special relief." Petitioner has not been denied the compensatory payment on any ground having any rational relation to either of these controlling considerations. The sole basis of the denial is that petitioner owed money to a processor of meat. This fact, standing alone, can not logically be taken as proving either ownership or control. There is a complete *non sequitur*. The presumption would, therefore, even on a *prima facie* basis be subject to condemnation under the decision of this Court in *Tot* v. *United States*, 319 U. S. 463. Certain it is that in the absence of actual ownership or control (admittedly not present here), the mere fact of indebtedness has no rational relation to either (1) the conduct of processing operations by petitioner from which profits might have been obtained to offset the losses on sales of fresh beef imposed by the maximum prices; or (2) prevention of the benefit of the compensatory payment flowing "to persons not intended to be benefited and not needing the special relief."

The Emergency Court of Appeals did not hold that the mere existence of a debt, standing alone, would warrant a denial of petitioner's claim. The holding was that indebtedness of a non-processing slaughterer to a processor *might* give the processor control. (R. 58-59) After stating its conclusion that on this ground a debt might reasonably raise a *prima facie* presumption of control, the court stated petitioner's position (R. 59):

> "But complainant urges that it is arbitrary and unreasonable to make this an absolute disqualification and to deny to the borrower the opportunity of satisfying the subsidy-paying agency that, notwithstanding the existence of the loan, the creditor in the particular case is not in control and the non-processing slaughterer's business is in fact wholly independent of and not integrated with the business of the creditor."

The ruling of the court that petitioner should not have the opportunity of "satisfying the subsidy-paying agency" and that its complaint should be dismissed, was rested on the following ground (R. 59):

> "But this suggestion would introduce difficult factual issues as to degrees of control and degrees of integration. Control by a creditor depends upon his ability to exert economic pressure rather than upon the terms of the loan contract, and an apparent showing of lack of control would not be easily susceptible of disproof. Even if all the facts were fully and correctly disclosed to the subsidy-paying agency, there would inevitably arise marginal cases where the line between eligibility and ineligibility would be difficult to draw. * * * considerations of administrative workability may render it impracticable to provide complete individualization of treatment."*

* Petitioner here was willing to assume the burden of "satisfying the subsidy-paying agency" of its absolute and complete independence. The dealings in meat between petitioner and the creditor were negligible (R. 10) and the complete independence of the petitioner during the period in issue is admitted.

This constitutes, we submit, a ruling by the Emergency Court that inherently arbitrary presumptions may be indulged by an administrative agency and the rights of citizens arbitrarily destroyed where the agency deems that its administrative convenience will be served thereby. This dangerous doctrine should be condemned by this Court. Supposed convenience is no excuse for arbitrary action and the denial of legal rights.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court directed to the United States Emergency Court of Appeals, to the end that this cause may be reviewed and determined by this Court as provided by the statutes of the United States; and that said judgment of the United States Emergency Court of Appeals may be reversed by this Court and the cause be remanded, and for such further relief as to this Court may seem proper.

Dated June 6, 1946.

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